S.B.CRIMINAL MISC. PETITION NO.544/2007
(Abdul Rehman & Anr. Vs. State of Raj.)

Date of order : : 10.05.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Farzand Ali for
Mr.Vinit Kumar Mathur, for the petitioners.
Mr.Ashok Upadhyay, PP for the State.

Reportable

By this misc. petition under Section 482 Cr.P.C, the petitioners are challenging the order of learned Additional Chief Judicial Magistrate, Kapasan dated 13.6.2006 whereby learned Magistrate has declared the petitioners as absconder and also initiated proceedings under Sections 82 and 83 Cr.P.C.

It is alleged that accused were not appearing before the trial court since 6.12.2005 and it was reported in the warrant of arrest that they were not present on their residence and went out for marriage purposes. On this count, accused were declared absconder. It is contended by learned counsel for the petitioners that before declaring the petitioners as absconder, it is mandatory to record the statement of the process server but learned

Magistrate without recording the statement of process server has initiated proceedings under Section 299 Cr.P.C. declaring the petitioners absconder and also initiated proceedings under Section 82 and 83 Cr.P.C and 446 Cr.P.C. A warrant of arrest has also been issued against the petitioners.

The only request of learned counsel for the petitioner is that the petitioners may be given liberty to surrender before the Additional Chief Judicial Magistrate, Kapasan and learned Magistrate be directed to decide the bail application of the petitioners in accordance with the law on the same day; and proceedings under Section 82 and 83 Cr.P.C. be closed.

Learned Public Prosecutor has supported the order of learned Magistrate dated 13.6.2006 and stated that petitioners are not appearing before the trial court, therefore, learned Magistrate has rightly declared the petitioners as absconder and initiated proceedings under Section 82 and 83 Cr.P.C.

I have considered the arguments advanced by learned counsel for the parties and also gone through the order

dated 13.6.2006 passed by learned Additional Chief Judicial Magistrate, Kapasan. It appears that learned Magistrate has declared the accused as absconder without recording the statement of process server. When accused were gone out for marriage purposes, learned Magistrate should have issued the process again and if accused is absconding or he could not be arrested then learned Magistrate should have called the process server and recorded his statement whether accused is absconding and after being satisfied himself that accused is absconding, he should have declared the accused as absconder.

It is settled proposition of law that before declaring the accused as absconder, the court has to be satisfied that accused had left their permanent residence or they are avoiding service or there is no chance of arrest in near future. Learned Magistrate has not proceeded in accordance with the law. He has further committed illegality that he has consigned the file to the record without recording the evidence. For this, Section 299 Cr.P.C. is very much clear in which it is written that when accused is declared absconder, learned Magistrate has to record the statements of the witnesses produced by the prosecution so they

can be read in evidence in the contingency shown in the Section itself. Merely on saying by the Prosecutor that they do not want to produce evidence, learned Magistrate has consigned the file to the record. This part of the order is also bad in eye of law. It appears that learned Magistrates are not adhering the Procedure laid down in the Code of Criminal Procedure. Learned Magistrates should be careful in future in such cases when accused are declared absconder under Section 299 Cr.P.C.

Looking to all the facts and circumstances of the case, the proceedings initiated against the petitioners under Section 82 and 83 Cr.P.C. are hereby dropped. Accused-petitioners, if so wish, may surrender themselves before the learned Additional Chief Judicial Magistrate, Kapasan on or before 23rd May of 2007. Learned Additional Chief Judicial Magistrate shall decide the application of the petitioner on the same day in accordance with law. The standing arrest warrant issued against the petitioners may be recalled immediately and if they will not appear before the trial court on the date fixed, the warrant of arrest shall be executed against them.

With these observations/directions, this misc. petition stands disposed of.

(KRISHAN KUMAR ACHARYA), J.

NK